IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 5003 of 2007(U)

PETITIONERS:

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1. MANOJ. S., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE
CORPORATION LTD., THIRUVANANTHAPURAM,
RESIDING AT MUNDAIKKAL PUTHIYA VEEDU,
PARAKKODE P.O., ADOOR, PATHANAMTHITTA.

2. SHINA ANTONY, JUNIOR ASSISTNT
KERALA TRANSPORT DEVELOPMENT FINANCE
CORPORTION LTD., THIRUVANANTHAPURAM, RESIDING
AT SANTIKAYIL, NEYYATTINKARA,
NEYYATTINKARA P.O., THIRUVANANTHAPURAM.

3. ABILAL G.O., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE
CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING
AT CITY LULTHERAN CHURCH, PANAVILA JN.,
THYCAUD P.O., THIRUVANANTHAPURAM.

4. SREELATHA S., JUNIOR ASSISTANT,
KESRALA TRANSPORT DEVELOPMENT FINANCE
CORPORATION LTD., THIRUVANANTHAPURAM,
RESIDING AT REGMINI VILASOM,
KOOVALASHERY P.O., NEYYATTINKARA.

5. BRILLA VARGHESE. U., JUNIOR ASSISTANT
KERALA TRANSPORT DEVELOPMESNT FINANCE
CORPORATION LTD., THIRUVANANTHAPURAM,
RESIDING AT V.U. SADANAM, MULLUVILA
MULLUVILA P.O., NEYYATTINKARA.

6. BAIJU S. JOSEPH,
JUNIOR ASSISTANT, KERALA TRANSPORT
DEVELOPMENT FINANCE CORPORATION LTD.,
THIRUVANANTHAPLURAM, RESIDING AT BEZLEL KALAYIL,
OTTASEKHARAMANGALAM P.O.,
THIRUVANANTHAPURAM.

7. ANILA. C., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SAJINI, LOURDUPURAM, KANJIRAMKULAM P.O., THIRUVANANTHAPURAM.

8. CHITHRA S.S., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT SARAS, EZHAKODE, MALAYINKIL P.O., THIRUVANANTHAPURAM.

9. MADHURI M. NAIR. R., JUNIOR ASSISTANT
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NANDHANAM, MYLODU, KOLLODU P.O., MALAYINKIL, THIRUVANANTHAPURAM.

10. SUMALEKSHMI P.S., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NANDHANAM, MYLODU, KOLLODU P.O., MALAYINKIL, THIRUVANANTHAPURAM.

11. RESHMI R.C., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT ANILA BHAVAN, S.N.PURAM, NETHAJIPURAM P.O., POTHENCODE, THIRUVANANTHAPURAM.

12. DEEPA S.S., JUNIOR ASSISTANT
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT NANDANAM, GNRA-89, ELLUVILA, MANKUZHY, PANGAPARA P.O., THIRUVANANTHAPURAM.

13. DEEPA. V. JUNIOR ASSISTNT,
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT R.T.MANDIRAM, KUNNATHOOR WEST, KUNNATHOOR P.O., KOLLAM.

14. GEETHA GOVINDAN. K.M., JUNIOR ASSISTANT
KERALA TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING AT VISHNU VIHAR, T.C.68/873, KUMALY LANE, PACHALLOOR P.O., THIRUVANANTHAPURAM.

**15. DIJI PRESSA S.S., JUNIOR ASSISTANT,
KERALA TRANSPORT DEVELOPMENT FINANACE
CORPORATION LTD., THIRUVANANTHAPURAM, RESIDING
AT SAROVARAM, NEAR ARIYOTTUKONAM TEMPLE,
ANDOORKONAM P.O., THIRUVANANTHAPURAM.**

**BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI. ALTHAF S.M.**

RESPONDENTS:

**1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**2. THE SECRETARY TO GOVERNMENT
TRANSPORT DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.**

**3. KERALA TRANSPORT DEVELOPMENT FINANCE
CORPORATION LTD., REPRESENTED BY ITS
MANAGING DIRECTOR, TRANSPORT BHAVAN,
FORT, THIRUVANANTHAPURAM-695 023.**

**4. THE MANAGING DIRECTOR, KERALA
TRANSPORT DEVELOPMENT FINANCE CORPORATION LTD.,
TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM-695 023.**

**ADV. SRI. C.P.SUDHAKARA PRASAD, ADVOCATE GENERAL
BY ADV. SRI.KRB.KAIMAL (SR.) SC FOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02/07/2007, ALONG WITH WPC NO. 5113/2007 AND CONNECTED CASES,
THE COURT ON 13/07/2007 DELIVERED THE FOLLOWING:**

WP(C) NO: 5003/2007 U

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE KTDFC DATED NIL.

EXT.P2. COPY OF THE STAFF PATTERN OF THE KTDFC LTD., DATED NIL.

EXT.P3. COPY OF THE REPRESENTATION BY THE CORPORATION TO THE GOVT. DDT. 4/10/2005.

EXT.P4. COPY OF THE GO MS NO. 15/06. DT. 22/2/2006.

EXT.P5. COPY OF THE GO MS NO. 14/06 DT. 22/2/2006.

EXT.P6. COPY OF THE GO MS NO. 13/2006 DT. 22/2/2006.

EXT.P7 SERIES: COPIES OF THE ORDERS OF REGULARIZATION ISSUED TO THE PETITIONERS, DT. 23/2/206.

EXT.P8. COPY OF THE GO MS NO. 4/2007/TRAN/ DT. 12/2/2007.

EXT.P9. COPY OF THE GO MS NO. 3/2007/ID DT. 5/1/2007.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE ORDER NO. EST.A/3579/2005-06/KTDFC DT. 13/2/2007 BY THE R3.

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K.BALAKRISHNAN NAIR, J.

W.P.(C) Nos.5003, 5113,
5122 & 5139 of 2007

Dated this the 13th day of July, 2007.

JUDGMENT

W.P.(C) No.5003/2007

The petitioners are employees of the 3rd respondent, Kerala Transport Development Finance Corporation Limited [hereinafter referred to as the '**Corporation**']. The point that arises for decision in this case is the validity of the Government Order Ext.P8 (G.O.(MS)No.4/2007/Transport dated 12.2.2007). The brief facts of the case are the following:

2. The petitioners are working as Junior Assistants in the Corporation. It is a Government owned company, incorporated in 1991. Its main function was to finance acquisition of transport vehicles by the Kerala State Road Transport Corporation. Ext.P1 is the Articles of Association of the 3rd respondent Corporation. As per Ext.P1, its Board of Directors is authorised to appoint necessary employees in the Corporation. But the approval of the Governor is necessary for making appointments to posts carrying a basic pay of Rs.2,500/- per month or more. The Government are competent to issue directions to the Corporation concerning “finances, conduct of business and affairs of the company”.

3. Though the Corporation started functioning in 1991, only 7 employees were appointed by it on a regular basis. They were the Managing Director, two Data Entry Operators and 4 Senior Assistants. In 1996, the Corporation expanded its business. It started granting loans to the public which included vehicle loans, housing loans, personal loans etc. The Corporation also started receiving deposits from the general public. By 2005, the total deposit of the Corporation exceeded Rs.150 crores and the number of depositors was approximately around 18000. With the expansion of the business of the Corporation, several persons including the petitioners herein were recruited on contract/daily wage basis. The officials of the Reserve Bank of India and also the Accountant General (Audit), Kerala, during inspections pointed out that the appointment of regular employees is necessary, for the purpose of fixing accountability in case of lapses on the part of the staff etc. Taking into account the views expressed by them, the Board of Directors, at its meeting held on 18.2.2005 framed the staff pattern for the Corporation consisting of 143 posts in 8 categories. Ext.P2 is the staff pattern framed by the Corporation.

4. Later, the Board of Directors, at its meeting held on 30.8.2005, resolved to absorb the contract/daily wage employees into regular service, taking note of their contribution in the development of its business. The Corporation was making profit every year continuously from 1997 onwards. Thereafter, the Corporation moved the Government by submitting Ext.P3 dated 4.10.2005 seeking permission of the Government for implementing its resolution to regularise the employees. The Government, by Ext.P6 order dated 22.2.2006 accorded sanction for creation of 143 posts in the Corporation. On the very same day, the Government, by Ext.P5 order, approved the Service Rules of the Corporation, subject to certain amendments in the Leave Rules proposed by the Corporation. In the light of Exts.P5 and P6, the Government, by Ext.P4 order dated 22.2.2006 gave sanction for regularisation of 106 employees working on contract/daily wage basis. In the light of those orders, the Board of Directors, by resolution dated 23.3.2006, resolved to regularise the services of the petitioners and others. Pursuant to the said resolution, the Corporation issued Ext.P7 series orders regularising them and placing them in the scale of pay of

Rs.4000-90-4090-100-6090. They were put on probation for a period of one year on duty within a continuous period of two years.

5. After the lapse of about one year from the date of regularisation, the Government suddenly issued Ext.P8 order dated 12.2.2007 cancelling Ext.P4 order dated 22.2.2006, which permitted regularisation of 106 employees. The Government found in Ext.P8 that the employees were appointed without following any fair selection procedure. While making appointments, the principles of communal reservation were not followed. This writ petition is filed challenging Ext.P8.

6. The petitioners submit, Ext.P8 has been issued without notice to them or hearing them. So, the said order is void ab initio as one issued in violation of the principles of natural justice. The Government have issued Ext.P4 order as per the Articles of Association. Once a power is exercised and regularisation is ordered, the Government have no power to recall or cancel that order. The Corporation is authorised to make appointments of employees. Pursuant to Ext.P4 order, the Corporation made the appointments. Thereafter, the

Government have no power to review Ext.P4. The powers of the Government to issue directions concerning "finances, conduct of business and affairs of the company" will not partake within its fold the power to issue an order in the nature of Ext.P8. The finding in Ext.P8 that the appointments made by the Corporation are illegal is untenable. The Board has absolute discretion to engage employees. The Corporation, after inviting applications from eligible candidates by publishing notice in the notice board of the Corporation, made the appointments. There is no law providing that in making appointments to a Government Company, communal reservation has to be followed. Therefore, the cancellation of the appointments on that ground is illegal. Unless the provisions of the Kerala Public Service Commission (Additional functions as Respects certain Corporations and Companies) Act, 1970 and the corresponding Rules are amended, the recruitment cannot be taken over by the Public Service Commission. So, the petitioners pray for quashing Ext.P8 and to grant all the reliefs sought for in the writ petition.

7. The 1st respondent has filed a counter affidavit in the connected writ petition, W.P.(C)No.5112/07. The same has

been filed in this writ petition is with an adoption memo. In the affidavit, it is submitted that based on the decision of the Board of Directors of the Corporation, the requisite number of employees were being engaged on daily wage basis. Those daily wage employees moved the Corporation for regularly absorbing them. The Board of Directors, by resolution dated 30.8.2005 resolved to request the Government to give sanction for absorbing them. The Government accorded sanction for creation of 143 posts and also approved the service rules. Simultaneously the Government accorded sanction for regularisation of 106 contract/daily wage employees. The Government point out that there was no selection process or interview before the appointment of the contract/daily wage employees. No order of appointment was given to the daily wage employees. The contract/daily wage employees were appointed without inviting applications. While making appointments, Rules of communal reservation were not followed. There is no representation for SC/ST community. So, the entire appointments were made illegally. Therefore, the Government have reviewed the entire matter and issued Ext.P8 order dated 12.2.2007. Following the Government Order, the

Corporation has cancelled their regularisation. So, at present, their status is, what was prior to the regularisation. The employees have no vested right for regularisation. If the Government have power to issue an order, it has the power to review and cancel the same. A case is pending before the Lok Ayuktha, challenging the regularisation on the ground that many of the persons regularised are from specific locations and from certain specific communities. The Government have issued Ext.P8 only to correct a mistake. No fresh daily wage contract employees will be inducted. The existing employees will be retained till Employment Exchange/PSC hands are appointed. The power of the Government under Article 61 of the Articles of Association to issue directions to the Corporation concerning "finances, conduct of business and affairs of the company" includes the power to issue an order in the nature of Ext.P8. So, if this court interferes with the impugned order, it will result in resurrecting the illegal regularisation. Even if the petitioners were heard, it would not have made any difference, it is submitted. The Government point out that in view of the decision of the Apex Court in **Secretary, State of Karnataka & others v. Umadevi &**

others {2006(4) SCC 1}, the Government have no power or authority to regularise casual employees.

8. Respondents 3 and 4 have filed a counter affidavit. They support the impugned Government Order Ext.P8. It is also pointed out that pursuant to Ext.P8, the Board of Directors of the Corporation has taken a consequential decision, on 12.2.2007 implementing the Government Order. The Managing Director has communicated the decision to all the employees by Ext.R3(a) dated 13.2.2007. The Corporation also submits that the selection of the petitioners was made without following the due procedure and appointments were made without regard to communal reservation.

9. The petitioners have filed a reply affidavit, dealing with the averments in the counter affidavit of the 1st respondent and the counter affidavit of the 3rd respondent. They reiterated their contentions in the writ petition. They have also produced Ext.P9 order issued by the Government dated 5.1.2007 regularising all casual workers of a Public Sector Undertaking on the request of its Managing Director. The permission was granted for regularisation of 483 casual workers of Kerala

Minerals and Metals Limited, giving relaxation in age, educational qualifications and by creating supernumerary posts, wherever necessary. So, the petitioners pointed out that there is inconsistency in the stand of the Government regarding regularisation of employees engaged, otherwise than in accordance with the regular procedure. The petitioners point out that the decision in **Secretary, State of Karnataka & others v. Umadevi & others {2006(4) SCC 1}** was rendered by the Apex Court only on 10.4.2006. In this case, the regularisation was ordered on 22.2.2006. Further, the said decision itself permits regularisation of employees with long periods of service, it is submitted.

10. Heard learned Senior Counsel Sri.T.P.Kelu Nambiar and Sri.N.N.Sugunapalan, and also learned counsel Sri.K.Jaju Babu and Sri.P.B.Suresh Kumar for the petitioners. Heard learned Advocate General Sri.C.P.Sudhakara Prasad for the Government and learned Senior Counsel Sri.K.R.B.Kaimal for the Corporation. The learned counsel reiterated their respective contentions mentioned above.

11. Learned counsel for the petitioners point out that the decision of the Apex Court was rendered only on 10.4.2006. Therefore, reliance placed on it to support the decision taken on 12.2.2006 is untenable. They also point out that in the light of Ext.P9 dated 5.1.2007, which is an order of regularisation of casual employees in a Government company, the contentions of the Government in support of Ext.P8 may not be accepted. They also point out that some of the employees have more than 10 years' service and therefore, their regularisation is permitted by the Apex Court in **Secretary, State of Karnataka & others v. Umadevi & others {[2006] 4 SCC 1}**. Reference is made to paragraph 53. The said paragraph reads as follows:

> "***One aspect needs to be clarified. There may be cases where irregular appointments not illegal appointments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or***

of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and

> ***regularising or making permanent, those not duly appointed as per the constitutional scheme."***
>
> **(Emphasis supplied)**

12. The petitioners also point out that the above quoted judgment clarifies that regularisation, if any, already made need not be reopened based on that judgment. So, it is not valid or proper to reopen the regularisation of the petitioners made prior to the aforementioned judgment. Alternatively, they contend that the impugned order having been issued in violation of the principles of natural justice is void ab initio. Fairness demands that they be given a chance to disabuse the Government before any adverse decision is taken against them. They also contend that there were no fresh materials before the Government warranting reopening of the decision in their favour taken as per Ext.P4. The Government do not have a case that the Corporation obtained sanction for regularisation by playing fraud or misrepresentation. All the facts and materials were available before the Government and therefore, there is no justification for reopening and recalling Ext.P4.

13. Learned Advocate General and Senior Counsel appearing for the Corporation pointed out that the employment under the Corporation is public employment. So, any appointment to the posts under the Corporation can be made only in conformity with Articles 14 and 16 of the Constitution of India. Rules of reservation have also to be followed. In this case, the selection was made without following the due procedure and appointments were made without following the Rules of communal reservation. So, the appointments are illegal. The Government should be conceded necessary powers to correct an illegality committed by it. They also point out that even if the petitioners were heard, it would not have made any difference. 'The result was obvious from the start'. So, hearing them would have been an empty formality or a futile exercise. In support of this submission, the learned Advocate General referred to the decision of the Apex Court in **S.L.Kapoor v. Jagmohan {AIR 1981 SC 136}, Shenoy v. Central Bank of India {1983 KLT 381}, M.C.Mehta v. Union of India & others {JT 1999(5) SC 114}, Union of India v. Kishan Gopal Vyas {1996 (7) SCC 134}, R.R.Verma v. Union of India {1980(2) SLR 335},**

Secretary, State of Karnataka & others v. Umadevi & others {2006(4) SCC 1}, and **Ashok Kumar Sonkar v. Union of India and others {2007 (4) SCC 54}.**

14. Learned senior counsel Sri.K.R.B.Kaimal supported the above submissions relying on the decisions of the Apex Court in **Union of India v. Kishan Gopal Vyas {1996(7) SCC 134}**, **Managing Director, ECIL, Hyderabad v. B.Karunakar {1993(4) SCC 727} and State of Maharashtra v. Jalgaon Municipal Council {2003(9) SCC 731}**.

15. It is common case that the impugned order Ext.P8 has been passed in violation of the principles of natural justice. Normally, such an order should be held to be void. But, it is settled law that 'where the result is obvious from the start' and that a fair hearing will not make any difference, the courts may decline relief. Prof.H.W.R.Wade and C.F.Forsyth have summarised this legal position under the heading “where a fair hearing 'would make no difference'” in their Administrative Law 9th Edition, which reads as follows:

> ***“Procedural objections are often raised by unmeritorious parties. Judges***

may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly. Lord Wright once said:

> *"If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."*
>
> *The dangers were vividly expressed by Megarry,J. criticising the contention that 'the result is obvious from the start':*
>
> *"As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."*

The last few words are especially apt for administrative decisions. They were adopted in a later case where the

court quashed a Secretary of State's order reducing a local authority's rate support grant for failure to grant them a hearing at the proper time. Even though it was 'certainly probable' that the decision would have been the same, since all the arguments had been fully rehearsed at an earlier stage, the court declined to hold that a hearing would have been a useless formality. In another case it has been held that it is a breach of natural justice for a magistrate's court to order the destruction of a dog under the Dangerous Dogs Act 1991 without hearing the owner, even where the court has no discretion but to order the destruction, since the procedure was fundamentally faulty. The argument that it would not have made any difference 'is to be treated with great caution. Down that slippery slope lies the way to dictatorship'. In the leading case Bingham LJ gave six reasons why such a holding should be a very rare event, although the court then proceeded so to hold in validating the dismissal of a probationer police constable for obesity, a physical fact which could not be gainsaid, even though an adverse report about him was not disclosed. And in a difficult case where the police did

not disclose adverse reports on ex-prisoners before informing their neighbours that they were convicted paedophiles, the Court of Appeal held that although the reports, or at least their gist, should have been disclosed, the omission was immaterial since disclosure would have made no difference.

This question profoundly affected the course of Ridge v. Baldwin. The argument favoured by the lower courts, and in Lord Evershed's dissenting speech, was that natural justice need not be enforced in the absence of a miscarriage of justice or some probable effect on such result. The House of Lords rejected this reasoning decisively, but nevertheless it has made a reappearance in several later cases. In one, a university student had been rusticated without a hearing and in breach of natural justice, but the courts refused him relief on the ground that his offence was of the kind that merited a severe penalty and the penalty inflicted on him was perfectly proper. In another case, where a schoolteacher's dismissal was annulled by the House of Lords because he had not been fairly heard, it was said that a man had no

right to be admitted to state his own case unless he could show that he had a case of substance to make, since the 'court does not act in vain'; and that it need not be determined whether a hearing was required where it 'could only be a useless formality' because there was nothing that the person affected could say against the action taken. Much the same was said by the Court of Appeal where car-hire drivers were banned from London Airport because of repeated and persistent offences against the regulations. There may be cases where it is merely futile to grant relief, as where food hawkers were refused street trading consent without being allowed to see objections which had been lodged but which, as was found when the judge inspected them, could not have affected the decision.

Judges are naturally inclined to use their discretion when a plea of breach of natural justice is used as the last refuge of a claimant with a bad case. But that should not be allowed to weaken the basic principle that fair procedure comes first, and that it is only after hearing both sides that the merits can be properly considered. A distinction might perhaps be made

> ***according to the nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified. This is the essence of good and considerate administration, and the law should take care to preserve it."***

16. In the light of the above principles, when the facts of the case are examined, I am not inclined to hold that this is a case where the hearing would have made no difference. If the petitioners were heard, they could have urged that the Government have taken a decision in their favour after having adverted to all the correct facts. There was no suppression of material facts or fraud from the part of the Corporation. Knowing the facts fully well, when a decision is taken, review of the same,

without any fresh materials, may not be justified, they could have pointed out. They could have also canvassed for extending the treatment similar to the one extended in Ext.P9 order. They could have also pleaded that the decision of the Apex Court rendered subsequently may not affect the regularisation already granted.

17. In view of the above position, Ext.P8 is quashed for violation of the principles of natural justice. It is made clear that I have not expressed any opinion on the other contentions raised by the petitioners. It is also declared that on quashing of Ext.P8, consequential proceedings issued by the Corporation cancelling the regularisation of the petitioners are also not enforcible. The Government will be free to pass fresh orders in the matter, after affording an opportunity of being heard to the affected employees.

The writ petition is allowed as above. No costs.

W.P.(C) Nos. 5113, 5122 & 5139 of 2007

The judgment in W.P.(C)No.5003/07 will govern these writ petitions also. Accordingly, these writ petitions are also allowed.

Sd/-

(K.BALAKRISHNAN NAIR)
JUDGE

sk/

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